IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 868 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BALVANTRAM NAGINDAS

Versus

THAKORBHAI LALLUBHAI

Appearance:

MS VASUBEN P SHAH for Petitioners

MR SB VAKIL for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 04/07/97

ORAL JUDGEMENT

1. The petitioners are the original plaintiffs who had filed the Small Cause Suit No. 97 of 1978 in the Small Cause Court, Surat, against the respondents for recovery of possession of the suit premises, inter alia, on the ground that the plaintiffs required the suit premises reasonably and bona fide for their personal use and occupation and that the defendants have acquired a

suitable accommodation. The suit was resisted by the defendants by filing written statement at Exhibits 15, 20 and 50, inter alia, contending that the plaintiffs did not require the suit premises reasonably and bona fide and that defendants had not acquired any suitable alternative accommodation.

2. The learned trial judge, Small Causes Court, Surat, by judgment and decree dated 29th October, 1988 dismissed the suit of the plaintiffs, inter alia, holding that the plaintiffs had failed to prove reasonable and bona fide requirement and that they had also failed to prove that the defendants had acquired the aforesaid residential accommodation. The plaintiffs thereupon preferred Regular Civil Appeal No. 6 of 1989 in the District Court at Surat. During the pendency of the appeal, the plaintiffs came to know that there was an entry made in the register of the Municipal Corporation of Surat on 6th of May, 1989 showing that the son of the respondent No.1, namely, the tenant had acquired suitable residential accommodation and such entry was posted in the Assessment Register of the Corporation on 6th of May, 1989. Therefore, in the appeal, the plaintiffs gave an application at Exhibit 14 for production of extract of Assessment Register as an additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. The said application came to be dismissed by the Extra Assistant Judge, Surat, by judgment and order dated 3rd of July, 1991. It is such order which is under challenge in this Civil Revision Application.

3. Ms. V.P. Shah, learned counsel for the petitioners has strongly urged before this Court that the trial court has not understood the scope of Order 41 Rule 27 (1)(b) of the C.P. Code and had not permitted production of additional evidence which has come to light and knowledge of the plaintiffs only after judgment was delivered by the trial court. In her submission, Order 41 Rule 27 was, in fact, enacted with the purpose of permitting party to produce additional evidence, which could not be produced by the parties notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence be produced by him at the time when the decree appealed against was passed, or that such document was required by the appellate court for any other substantial cause.

4. In this connection, she has also relied upon the decision of the learned Single Judge of this court in the case of MANJI DHARMSHI v. KADVA BHADA reported in 7 GLR

405. I have gone through the said reported judgment and more particularly the observations on which Ms. V.P. Shah relies and I am of the opinion that the said judgment has no application to the facts of the present case. In the present case, document is sought to be produced at the appellate stage in order to establish that the defendants - tenant had acquired suitable residential accommodation and that, therefore, he was liable to be evicted under Section 13(1)(l) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Act"). If one turns to the provision of Sec. 13(1)(l) of the said Act, it provides for eviction of the tenant on the ground that the tenant has built, acquired vacant possession of or been allotted a suitable residence. The use of the past perfect tense by the words " has built, acquired or has built, allotted suitable residence" assumes importance. If the building of the suitable residence or acquisition or allotment thereof is subsequent to the institution of the suit and there is refusal of decree by the trial court under Sec. 13(1)(l) of the Act, clause (l) of Section 13(1) cannot operate. Their Lordships Justice Honourable Mr. B.K.Mehta and Honourable Mr. Justice D.C. Gheewala in the case of SHIVLAL NATHURAM VAISHNAV v. HARSHADRAI HARIBHAI OZA, reported in 21 GLR 99 propounded the law that in order that a landlord may successfully claim a decree under Sec. 13(1)(L) of the Bombay Rent Act, it should be necessary that a tenant has acquired or been allotted a suitable residence and that the acquisition or allotment continue inexistence till the date of filing of the suit. The cause of action provided in Sec. 13(1)(L) of the Act must exist not only by or before the notice to quit but it must also exist at the time when the suit is filed. In view of the aforesaid settled position of law, there is no manner of doubt that the Legislature has advisedly used the present perfect tense and future action of building, acquisition or allotment of suitable residence cannot relate back to the date of the suit so as to permit the landlord to get a decree of eviction on the ground of Sec. 13(1)(L) of the Act and the remedy for the landlord is to institute fresh suit for a fresh cause of action. In that view of the matter, and more particularly, in view of the fact that the house in the present case was purchased on 1.1.1988 i.e. prior to the date of the decree but subsequent to the date of the suit, a mere subsequent entry thereof made in the register of the municipal corporation would not amount to acquisition of the house on the date on which the entry is posted in the Assessment Register of the Municipal Corporation. It is the entry which is made in the register of sub-registrar

that makes difference. Even otherwise also, whether the residence is suitable or not, is a question, which shall have to be gone into because if the tenant has deposed that with the increased number of members of the family, acquisition of the new premises was absolutely essential, as per the settled legal position of this court, the landlord would not necessarily be entitled to a decree of possession. In that view of the matter, the order passed by the Extra Assistant Judge, Surat, dated 3rd July, 1991, cannot be said to be without jurisdiction and/or in exercise of excessive power nor can it be said that any irregularity touching to the jurisdiction of the court is committed and hence the Civil Revision Application deserves to be dismissed, the same is dismissed. Rule is discharged. Interim relief, if any, stands vacated. No order as to costs.

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